

VZCZCXRO9147
RR RUEHCHI RUEHDT RUEHHM RUEHNH
DE RUEHPF #0573/01 2230043
ZNR UUUUU ZZH
R 110043Z AUG 09
FM AMEMBASSY PHNOM PENH
TO RUEHC/SECSTATE WASHDC 1042
INFO RUCNASE/ASEAN MEMBER COLLECTIVE

UNCLAS SECTION 01 OF 02 PHNOM PENH 000573

SENSITIVE
SIPDIS

STATE FOR EAP/MLS, P, D, DRL, S/WCI

E.O. 12958: N/A
TAGS: [PGOV](#) [PHUM](#) [KJUS](#) [PREL](#) [EAID](#) [CB](#)
SUBJECT: Khmer Rouge Tribunal: The Trial of S-21
Interrogation Center Head Kaing Guek Eav, Week 15

REF: PHNOM PENH 539 AND PREVIOUS

¶1. (SBU) SUMMARY: Embassy staff routinely observes the proceedings of the trial against the notorious Khmer Rouge torture center head, widely known as Duch, at the Extraordinary Chambers in the Courts of Cambodia (ECCC) (Reftel). This report summarizes the 15th week of activities inside the court at the Khmer Rouge Tribunal. More technical accounts of the proceedings can be found at: www.csdccambodia.org; www.kidccambodia.org and at <http://socrates.berkeley.edu/~warcrime/>. END SUMMARY.

Vocal Week for the Defense

¶2. (SBU) This week the Court continued its questioning and testimony of former S-21 staff, in an attempt to further outline the working conditions, procedures, and treatment of detainees at the prison. The defense attorneys and the defendant himself raised issues with the submission of written testimony on behalf of three witnesses. Defense lawyer Kar Savuth noted that written testimonies heard in Court so far had differed from live testimonies given by the same witnesses. Duch went so far as to call one of the statements, given by former S-21 photographer Nhem Eng, a "lie" and accused the witness of embellishing his role at the prison and "boasting".

Expert Witness: "To Understand Does Not Mean To Accept"

¶3. (SBU) Historian David Chandler offered testimony based on his research on the Khmer Rouge and S-21. (NOTE: Chandler wrote one of the most extensive histories of the notorious prison, "Voices from S-21". END NOTE.) Unlike earlier witness testimony, many of the questions posed to Chandler addressed larger, sometimes philosophical issues, such as why S-21 existed and whether Duch was truly remorseful for his actions. The defense team questioned Chandler regarding the notion of "crimes of obedience", again trying to establish that Duch ran S-21 under fear of disobeying his leadership. Chandler agreed that no one could say what they would have done in Duch's situation, but added that it did not make the defendant's actions any more commendable. "To understand does not mean to accept," he testified.

¶4. (SBU) Herewith are observation notes for the week beginning August 3, 2009:

Monday, August 3:

Increased Number of Observers Brought In From the Provinces

There were approximately 450 observers during the morning session, and approximately 300 observers during the afternoon session. After the afternoon break, only 30-40 observers remained, as many of the Cambodian observers were from rural areas and left to return home before evening. The Cambodian observers were mostly from Takeo, Kampot, and Kampong Chhnang provinces. They seemed to come

together, as they arrived in large groups at the same time. About 100 foreigners were in the audience.

Questioning of Former S-21 Staff Continues

The court heard testimony from two witnesses during the day's proceedings. In the morning session, Mr. Sek Dorn, a former medic at S-21, answered questions about the general situation and health of the detainees. The questions appeared geared towards assessing how serious the prison's interrogation tactics were, and if there were any survivors.

Mr. Lap Meas, a former S-21 guard, testified in the afternoon session. Judge Ya Sokhorn asked Lap Meas questions about how he got his job at the prison, his general duties, interrogation practices, and if Lap witnessed any killings or physical abuse of the detainees.

Overall the proceedings seemed to run smoothly. However, the judges had to repeat themselves during Sek Dorn's testimony, because the witness had difficulty understanding the questions. The prosecution and defense lawyers required extra time for witness questioning. The translation was well done.

Tuesday, August 4:

There were approximately 350 observers in the audience, who were mostly Cambodian. The group was evenly divided between men and women. Several audience members said they were from Takeo Province, and a few said they were from Phnom Penh. There were about 25 foreigners in the morning session, and about 15 in the afternoon.

PHNOM PENH 00000573 002 OF 002

The morning session saw testimony from Mr. Lach Mean, a former guard and interrogator at S-21. The witness clearly answered all the questions posed to him, and he seemed to recall his time at S-21 well. There were a few points where he had some difficulty understanding the translation and had to ask the interpreters to repeat themselves.

Defense Protests Use of Written Statements

In the afternoon session, there was no live testimony. Rather, the court clerk read written testimonies from three witnesses: 1) Mr. Khiev Chet, a former S-21 guard; 2) Pes Math/Ly Try, a former S-21 guard; and 3) Mr. Nhem Eng, a photographer who took pictures of the Khmer Rouge leaders, as well as detainees in S-21.

Throughout the day there were several small administrative issues. At one point, Presiding Judge Nil Nonn stopped the proceedings and complained when Co-Prosecutor Anees Ahmed stood and spoke without permission. Nil Nonn had to stop civil party lawyer Silke Studzinsky when her time for witness questioning ran out. She requested one final question for the witness after Nil Nonn stopped her, which he allowed. The judges also had to consult amongst themselves on three separate occasions.

Defense lawyer Kar Savuth protested the use of written testimonies as evidence and requested that the Court bring the witnesses to testify in person instead, noting that live witness testimony had differed so far from original written statements. Duch also refuted Nhem Eng's written testimony, saying that the photographer was embellishing his role at the prison. Nil Nonn denied the defense request however, arguing that all the parties had agreed to use the written testimonies to save time for live testimony by the more important witnesses.

Wednesday, August 5:

Approximately 350 observers attended the day's proceedings. The majority of the participants were Cambodians from Kampong Cham Province. There were about 20 to 25 foreigners in the audience.

Cheam Sour, a former security guard at S-21, was the only witness. He testified that he saw a person being burnt alive with car tires at the prison. There was a lot of repetition in the questioning of the witness, although the translation seemed to be good. The witness seemed to forget some of the details about his experience, as he sometimes provided differing answers to the same questions when they were repeated multiple times. Duch refuted the witness' testimony, saying that he had only ordered the burning of dead bodies, not live prisoners.

The court then heard several civil party statements, which were read out loud by the Prosecutor. The statements included a question and answer record between investigators and the witnesses.

Thursday, August 6:

There were approximately 500 observers, mostly Cambodians from rural areas. The audience remained quiet throughout the proceedings but appeared to be interested in the testimony.

Noted Historian Testifies as an Expert Witness

History professor David Chandler of Monash University in Australia testified as an expert witness during the day's proceedings. (NOTE: Chandler wrote one of the most extensive histories of the notorious prison, "Voices from S-21". END NOTE.) The judges asked Professor Chandler several questions regarding his research, often referring to specific pages of his book to clarify certain statements or learn about his sources of information. Unlike his reactions to earlier witnesses, Duch was very brief and respectful in his statements regarding Chandler's testimony.

The proceedings ran smoothly overall, aside from some issues with translation. Professor Chandler spoke very quickly at times and the translators had difficulty keeping up with him. The judges reminded Chandler twice to speak more slowly so that his statements could be accurately translated into the two other languages. One of the lawyers also asked a question very quickly, causing some confusion in the translation, but this was caught and corrected.

RODLEY